

Children's Law Center of Indiana



CHINS

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In ***In Re G.W.***, 977 N.E.2d 381 (Ind. Ct. App. 2012), the Court affirmed the trial court's order requiring Mother to make the child available for an interview requested by the Indiana Department of Child Services (DCS) to assess the child's "condition" pursuant to IC 31-33-8-7 as part of a DCS child abuse and neglect assessment. In November 2011, the nine-year-old child and her twelve-year-old sister (Sister) were living with Mother and Stepfather. Sister told Mother that Stepfather had kissed her and rubbed her legs while they watched television and had cuddled with her in bed and touched her bottom. In response to these revelations, Mother took Sister to a counseling session on November 14, 2011. Shortly thereafter, Mother was contacted by DCS about Sister's allegations against Stepfather, and DCS requested an interview with Sister. Prior to the interview, DCS received copies of diary entries typed on a computer owned by Sister's paternal grandmother, but stored under Sister's password, that described sexual intercourse between Sister and Stepfather. In addition, Sister's biological father reported to DCS that Sister had told the child about Stepfather's inappropriate touching and the child then told Mother about the touching. During her interview at Susie's Place in Bloomington, Sister recanted her allegations against Stepfather, saying that she had made the allegations because she was angry with Mother for not spending as much time with her or doing as many things with her as Mother once had. Sister also denied making the diary entries and said that she had told Mother about the touching incidents. Despite Sister's recantation, DCS requested an interview with the child, but Mother refused.

On December 15, 2011, DCS filed an amended verified emergency petition pursuant to IC 31-33-8-7(d) and (e) and IC 31-32-13-1 to compel Mother and Stepfather to make the child available for an interview. DCS alleged that there was good cause to believe that the child may be at risk due to Sister's allegations and access to the child by DCS was necessary to ensure the child's safety and to complete the investigation. On December 20, 2011, the trial court held a hearing on the petition. The DCS family case manager testified that: (1) she wanted to interview the child "to make sure that she's safe and also to discuss the inconsistencies" regarding how Mother learned about the alleged abuse; (2) that "recantation is a part of [the] disclosure process; and (3) that the police were still analyzing the computer on which the incriminating diary entries

were typed to determine whether Sister had actually written them. On December 27, 2011, the trial court issued an order granting the petition. The trial court found that, although IC 31-33-8-7 does not specifically address an interview of a child other than the subject child, IC 31-33-8-7(a) does require the assessment to include the name *and condition* of other children in the home (emphasis added in opinion). The trial court found that this provision, combined with IC 31-32-13-1 [which allows the juvenile court upon motion to issue an order to control the conduct of any person in relation to the child] provided authority for the order. The court also found good cause for the order based on Sister's initial allegations of molestation and the reported diary entries, despite Sister's subsequent recantation of the allegations and denial of being the author of the diary entries, the serious nature of the original allegations, and the child's relatively close age to Sister. The court also found that DCS had made reasonable efforts to obtain the consent of the custodial parent for the interview, and ordered Mother to permit the child be interviewed by DCS at Susie's Place in Bloomington. The trial court stayed its order pending Mother's appeal.

The Court found that Mother had failed to establish that the trial court erred in granting DCS's petition to compel the interview of the child as part of the DCS assessment pursuant to IC 31-33-8-7. *Id.* at 387. The Court noted that the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution protects a parent's fundamental right to raise her child without undue interference by the state. *Id.* at 384-85, citing *In Re T.H.*, 856 N.E.2d 1247, 1250 (Ind. Ct. App. 2006). The Court also said that this fundamental right is not unlimited, however, because "the state has a compelling interest in protecting the welfare of children. When parents neglect, abuse, or abandon their children, the state has the authority under its *parens patriae* power to intervene." *Id.* at 385, citing *G.B. v. Dearborn Cnty. Div. of Family and Children*, 754 N.E.2d 1027, 1032 (Ind. Ct. App. 2001), *trans. denied* (2002). The Court also observed that: (1) a question of statutory interpretation is a matter of law, and the Court is not bound by, nor required to give deference to the trial court's interpretation; (2) when interpreting a statute, the Court looks to the express language of the statute and the rules of statutory construction; (3) the Court's objective is to ascertain and give effect to the legislative intent and to interpret the statute in such a manner as to prevent absurdity and to advance public convenience; (4) the Court must be mindful of the purpose of the statute as well as the effect of an interpretation; (5) the Court presumes that our legislature intended its language to be applied in a logical manner consistent with the underlying goals and policy of the statute; (6) statutes relating to the same general subject matter are *in pari materia* (on the same subject) and should be construed together to produce a harmonious statutory scheme. *Id.* at 385, citing *KPMG, Peat Marwick, LLP v. Carmel Fin. Corp.*, 784 N.E.2d 1057, 1060 (Ind. Ct. App. 2003) and *Klotz v Hoyt*, 900 N.E.2d 1, 5 (Ind. 2009).

The Court observed that IC 31-33-8-7(a)(3) provides that a DCS assessment, “to the extent that is reasonably possible, *must include*...[t]he names and conditions of other children in the home” (emphasis added in opinion). G.W. at 385. The Court also noted that IC 31-33-8-7(d) specifically contemplates that DCS may interview those “other children” to determine their conditions and obtain a court order if necessary to facilitate such interviews. Id. Although Mother argued that IC 31-33-8-7(a)(3) refers only to a child’s physical condition, the Court disagreed, stating that the statute contains no such limitation, and the Court may not read one into it. Id. at 386. Although Mother complained about the proposed interview arrangements, the Court observed that she cited no statutory or constitutional prohibitions against them and the Court was aware of none. Id. The Court noted that IC 31-33-8-7(e) specifically provides that the court “may grant the motion to interview the child, either with or without the custodial parent...being present” and that nothing prohibits DCS from designating a third party to interview the child outside the home. Id. The Court was not persuaded by Mother’s argument that an interview with the child was unnecessary because Sister had recanted her allegations against Stepfather and had denied writing the diary entries. Id. at 387. The Court noted: (1) DCS’s threshold obligation to assess the “conditions of other children in the home” pursuant to IC 31-33-8-7(a)(3); (2) testimony from the DCS case manager that “recantation is a part of [the] disclosure process” and that the police were still analyzing the computer on which the diary entries had been typed to determine whether Sister had actually written them; (3) because no allegations had been made regarding the child and Mother had vouched for the child’s safety did not mean that DCS’s or the trial court’s concerns were unwarranted; (4) the child’s school attendance proved little regarding her overall condition for purposes of IC 31-33-8-7(a)(3). Id.